STATE OF CONNECTICUT
LIEUTENANT GOVERNOR NANCY WYMAN

October 31, 2011

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Madame Secretary:

On behalf of the State of Connecticut, we offer the following comments on the Standards Related to Reinsurance, Risk Corridors and Risk Adjustment published in the Federal Register on July 15, 2011 pursuant to title I of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010.

We have several suggestions regarding ways in which we believe the regulations can be improved to help ensure that these programs achieve the desired goals of mitigating adverse selection, stabilizing premiums, and promoting competition in the individual and small group markets.

Overall, we are concerned that the proposed methodology is overly complex and may not lend itself to the commercial market; the transfer of premium dollars between carriers may not be consistent with the requirements of an effective rate review process; the proposed methodology may result in rates that are inadequate where the risk score is high and excessive where the risk score is low; and the basic approach is inconsistent with actuarial pricing principles. Our specific comments and suggestions are detailed below.

Section 153.20 defines a contributing entity with respect to the reinsurance program as "any health insurance issuer and, in the case of a self-insured group health plan, the third party administrator of the group health plan". We believe that the responsibility for making the reinsurance contributions should be placed on the risk-bearing entity. While the insurer is the risk-bearing entity for fully insured plans, the employer, not the administrator, is the risk-bearing entity for self-insured plans. By defining the contributing entity as the administrator of the self-insured plan, it appears that the responsibility has been inappropriately shifted from the (risk-bearing) employer to the (non-risk-bearing) administrator. We suggest that the definition of a contributing entity be revised to correctly identify the employer as the risk-bearing entity, with allowance provided to the employer to direct the administrator to coordinate payments with the federal government.

Pursuant to §153.200 and §153.220, reinsurance contributions are based on a percentage of earned premiums for fully insured plans and on a percentage of medical expenses for self-insured plans. This proposed definition results in higher contributions for insured plans, compared to self-insured plans because it includes administrative expenses in the contribution base for fully insured plans but not for self-insured plans. We recommend that contributions for self-insured plans be based on the premium-equivalent – which is routinely calculated by self-insured plans to reflect the anticipated cost of claims and administrative costs – rather than on medical expenses to ensure that both fully insured and self-insured plans are treated equitably.

§153.210(a) provides that each state that elects to operate an Exchange must establish a reinsurance program. We ask that you consider allowing all states to choose to operate the transitional reinsurance program or have it operated by HHS, just as you have proposed for the administration of the risk adjustment program.

§153.220(b)(2)(i) indicates that reinsurance payments must be used for reinsurance payments. Additionally, §153.220(3) provides that an applicable reinsurance entity may collect more than the amounts due from the set national rate to provide funding for administrative expenses of the applicable reinsurance entity. This appears to indicate that the national contributions cannot be used to pay the state's administrative expenses. Please clarify the intent of these provisions, which seem to imply that each state will have to fund the administrative costs of the transitional reinsurance program from sources other than the federally mandated reinsurance contributions.

In response to the request for comments regarding the timing of reinsurance payments, we believe that due to the unique market circumstances that exist in each jurisdiction, states should be given as much flexibility as possible in setting timeframes for reinsurance entities to pay claims.

Additionally, states should be allowed the flexibility to use a methodology that ensures that all claims are paid on a uniform proportional basis rather than reward carriers on a first-come first-served basis. A state, for example, may decide to pay an initial percentage of all eligible claims to ensure that all carriers are treated fairly and that payments are not unfairly made to those issuers that present claims first. If there are funds remaining at the end of a reasonable period (e.g., quarter or year), a state may then increase the percentage of all claims paid.

We request that you clarify the timing and calculation of the various adjustments (i.e., risk adjustment, reinsurance, and risk corridors) and how they relate to the determination of premiums under the effective rate review process and the medical loss ratio for rebate purposes.

We suggest greater flexibility with regard to the entity or entities that may administer the reinsurance and risk adjustment programs. Pursuant to §153.310**,** a state may elect to have an entity other than the Exchange perform the risk adjustment functions provided that the entity selected meets the requirements proposed in §155.110 of the notice of proposed rulemaking entitled, "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans," published on July 15, 2011.

However, states must adhere to the same conflict of interest and governance restrictions for administration of the reinsurance and risk adjustment programs that are applicable to the Exchange. This requirement may impose unnecessary administrative limitations. The governing structure of the

Exchange may need to include a broader group of stakeholders than the governance structure for the risk adjustment and reinsurance programs.

Connecticut currently has a reinsurance pool in the small employer market, the Connecticut Small Employer Health Reinsurance Pool (CSEHRP). The pool is a non-profit entity created by statute and is a mandatory pool made up of all carriers issuing health insurance in the state (Conn. Gen. Statutes §38a-569). When the state enacted small employer health care reform with some guaranteed issue requirements, carriers could offset some of the risk by reinsuring individuals or entire groups through CSEHRP. Carriers pay premiums, and any excess losses are assessed to all members based on premium share. The Insurance Department is an ex-officio member of the Board of Directors and has oversight over the plans, rates, plan of operations, and Board membership.

Connecticut also has a high risk pool, the Health Reinsurance Association (HRA), created by statute (Conn. Gen. Statutes §38a-551 et seq.). Although it currently provides for direct written coverage to individuals and small groups, it has the ability to conduct reinsurance in its plan of operation. There is a Board and all carriers writing individual and group medical insurance are members of the HRA. There is a contracted administrator that handles the day to day operations. HRA is subject to Insurance Department oversight including approval of forms, rates, Board members, plan of operation, and financial oversight.

The Board membership of both pools is virtually identical. Connecticut may want to pursue the use of these existing structures for the required reinsurance and risk adjustment programs, and we request greater flexibility on the proposed governance requirements.

Finally, the federal program creates a burden on states creating an Exchange as such states have no federal fallback, but must follow national procedures and use national contribution rates. Although there is some allowance to coordinate with existing high risk pools, the limited flexibility may make this difficult to achieve.

We appreciate the opportunity to offer these comments, and look forward to working with you further on these and other health care reform implementation activities.

Sincerely,

Nancy Wyman
Lieutenant Governor
State of Connecticut